

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F411037**

**MICHAEL MCGALLICHER**

**CLAIMANT**

**WEYERHAEUSER CO.  
(SELF-INSURED)**

**RESPONDENT EMPLOYER**

**ORDER AND OPINION FILED NOVEMBER 20, 2006**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant appeared PRO SE.

Respondents represented by the HONORABLE JUDY ROBINSON WILBER, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Hot Springs, Arkansas on September 22, 2006. A prehearing conference was held on June 27, 2006 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties stipulated to the following:

1. There was a compensable gradual onset injury diagnosed on June 22, 2002.
2. The compensation rates are \$406/305.
3. The respondents accepted a 10% body as a whole rating.

Respondents contend the claimant is not entitled to wage loss. Under Ark. Code Ann. §11-9-522, respondents contend the claim would be barred from wage loss benefits because the claimant refused work that was consistent with his medical restrictions and further, is working in another employment since leaving the respondent

employer. Respondents further contend the medical evidence does not preclude the claimant from gainful employment.

### **ISSUES TO BE LITIGATED**

1. Wage loss benefits.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. There was a compensable gradual onset injury diagnosed on June 22, 2002.
2. The compensation rates are \$406/305.
3. The respondents accepted a 10% body as a whole rating.
4. The claimant has failed to prove by a preponderance of the evidence that he is entitled to any wage loss benefits in excess of the 10% permanent impairment rating.

### **DISCUSSION**

The claimant, 48 years old, began his employment with the respondent employer in 1976 where he worked in the sawmill until 2001. In 2001, the claimant transferred to the plywood plant on the graveyard lay-up line. The claimant began developing a rash at that time. In 2002, the claimant began treating with doctors for his rash and was moved on July 5, 2002, to the green end utility at his work. According to the claimant,

his rash began to get worse. The claimant's job was a core feeder layer at the plywood plant. His job was on an assembly line where he placed core between veneers to make sheets of plywood. Glue is sprayed onto the pieces and there is trace formaldehyde in the glue. The claimant had a patch test performed and the results returned he was allergic to formaldehyde. The claimant testified that he continued to have problems with the rash, swelling and pain and he finally left work on February 4, 2004, and was placed on short term disability.

After the claimant went on short term disability, his doctor placed him off work on restrictions. The claimant testified that he continued to call Bobby Freeman, Human Resource Manager for the respondent, about possible jobs. Finally, in January 2005, the claimant was offered a green end utility job. According to the claimant, he went to the job and he felt he was harassed by Ray Reed and was told by Ray Reed that he would be used as he saw fit to keep the mill running. The claimant testified that he was afraid of the chemicals and that he would get hurt again and did not try the job. The claimant received a letter from his employer terminating him.

The claimant was working at the time of the hearing as an electrician's helper for Hester Electric and had been working about one month and a half. The claimant works 40 hours per week and makes \$7.00 per hour. The claimant made approximately \$600 per week at his former employer. The claimant has a GED and has taken a heating and air course and received a certificate in 2001; however, he has not been licensed. The claimant is currently enrolled in electrician's school.

The claimant confirmed his family doctor diagnosed him with contact dermatitis and that has been confirmed by several doctors, to include Dr. Henry Simmons, a

toxicologist. The claimant was recommended to avoid handling chemicals such as formaldehyde products and nickel. The claimant testified that he worked in the green end for about two weeks in July 2002, and his rash returned and this was before he took the leave. The claimant confirmed that Bobby Freeman sent him a letter offering him a job on a trial basis in the green end and honoring his medical restrictions. The claimant verified that he had attempted two other jobs since leaving the respondent employer. He worked a couple weeks for Jim Frasier Electric, making \$8.00 per hour and worked one week for H & H, making \$8.00 per hour.

Bob Freeman, Human Resources Manager for the respondent employer, testified that the utility job offered the claimant was a position where management had flexibility in its duties and was for a trial basis. Mr. Freeman testified that job could fit the claimant's work situation and paid the claimant his previous wages. Mr. Freeman further testified that the claimant did not attempt the job but decided to leave during the orientation process. The claimant was sent a termination letter since he declined the job offer.

Ray Reed, supervisor of the green end for respondent, testified that on January 11, 2005, he had a pre-shift meeting with the claimant and Tony Johns. Mr. Reed did not know that the claimant was coming to work on his night shift team until he later checked his e-mails; however, he was going to treat the claimant just like a new employee and place him with someone. Mr. Reed explained the type of work the claimant would be assigned to handle and the claimant suggested he speak with his attorney. Mr. Reed decided to call Bob Rostan, the operations manager, and he allowed the claimant to speak with Mr. Rostan over the telephone about the job. After

talking to Mr. Rostan, the claimant left without attempting the work.

Tony Johns, utility worker for the respondent employer and union representative in 2005, testified that he attempted to explain to the claimant that he would not be handling chemicals. The claimant was going to start working in the #2 dryer and there were no chemicals in that job. Mr. Johns confirmed that after the claimant spoke with Mr. Rostan, the claimant left and did not attempt any work.

Rob Rostan, operations manager, testified that he understood the claimant was allergic to formaldehyde and that was not present at the green end. Mr. Rostan had a telephone conversation with the claimant on January 11, 2005, and the claimant decided to discuss the job with his lawyer and left the work site.

The claimant contends he is entitled to wage loss benefits. Respondents have accepted a 10% permanent impairment rating and have paid those benefits and also offered the claimant a job within his restrictions. Respondents contend that since the claimant declined its job offer, no further indemnity benefits are owed the claimant.

Respondents rely on Ark. Code Ann. §11-9-522(b)(2):

However, so long as an employee, subsequent to his or her injury, has returned to work, has obtained other employment, or has a bona fide and reasonably obtainable offer to be employed at wages equal to or greater than his or her average weekly wage at the time of the accident, he or she shall not be entitled to permanent partial disability benefits in excess of the percentage of permanent physical impairment established by a preponderance of the medical testimony and evidence.

After considering the credible evidence, to include the testimony of the claimant and the respondents' witnesses, I find the claimant has failed to prove by a preponderance of the evidence that he is entitled to any wage loss benefits. The

employer's representatives credibly testified that the claimant was made a job offer that was consistent with his work restrictions and was at the same wage as before his injury and the claimant declined the job offer. The claimant confirmed that he returned to the employer and discussed a position; however, he was concerned that he would still be working around chemicals that caused his dermatitis condition and he did not attempt the job. The claimant was subsequently sent a termination letter. The claimant's treating physicians have advised that he avoid contact with phenol formaldehyde resin and nickel. Respondents' representatives assured the job offered the claimant would be within his restrictions and would be considered on a trial basis. I was persuaded that a bona fide job offer was extended the claimant and he declined the offer. Because the claimant declined the job offer, I find that he is not entitled to additional permanent partial disability benefits in excess of the impairment rating.

Further, the claimant was employed at the time of the hearing as an electrician helper for Hester Electric. The claimant was working approximately 40 hours a week earning \$7.00 per hour. He had demonstrated that he is capable of being gainfully employed.

### **ORDER**

The claimant has failed to prove by a preponderance of the evidence that he is entitled to any wage loss benefits in excess of the 10% permanent impairment rating. The claim for benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**